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Abstract

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Keywords: Autonomy, HEC, Ordinance, Eighteenth Constitutional Amendment, Financial Autonomy

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Autonomy of Higher Education Sector in Post-18th Constitutional Amendment Era: Challenges and Prospects

Abstract

The current study tries to comprehend whether the devolution of power as envisaged by the 18th Amendment is reflected and incorporated in the existing Legislative Framework of Higher Education. Theoretically, the 18th amendment strengthened the federal structure where federating units are empowered to make their own decisions without external interference; however, practically Apex Courts are backing the HEC to have a strong hold on provincial commissions while enjoying the absolute authority in the name of cooperative Federalism. It's around the changing role of the HEC at the Federal level and the newly emerging role of HECs at the provincial level. The study revolves around the role of Higher Courts in impacting and reshaping the existing regulatory framework. The conclusions showed that universities enjoy more substantive autonomy and less procedural autonomy; therefore, HECs have to respect other Provincial HECs as mandated by the Eighteenth Amendment while transferring powers pragmatically to provincial HECs.

Keywords:

[Autonomy](#), [HEC](#),
[Ordinance](#), [Eighteenth](#)
[Constitutional](#)
[Amendment](#), [Financial](#)
[Autonomy](#)

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Introduction

The condition of the higher education sector in Pakistan has been declining steadily since the country's inception. In the beginning, autonomy was denied to provinces while negating the aspiration of Pakistan's resolution regarding provincial autonomy. Likewise, six points (The six-point formula proposed significant reforms: implementing a federal parliamentary system based on direct adult franchise, determining provincial

representation in the federal legislature by population, limiting the federal government's authority to foreign affairs, defense, and currency, and establishing separate accounts and paramilitary forces for each wing or region) of Sheikh Mujib-ur-Rehman (Sheikh Mujib-ur-Rehman played a bouncy role in Pakistan politics and rose to prominence by presenting a 6 Point formula) and separation of East Pakistan was denial of provincial autonomy. (Humayun Syed, 1995) Pakistan has a chequered constitutional politico-legal history revolving



around centralization and decentralization of powers. On one hand, military generals tried to exclude the role of political parties, while political elites laid emphasis on a greater role of provincial autonomy as envisaged in the Jukto Front (The United Front was a coalition of political parties in East Bengal that contested and won against Muslim League in 1946 provincial elections to the East Bengal Legislative Assembly.), movement to restore democracy (MRD) (Movement for the Restoration of Democracy (MRD) was a political movement in Pakistan in the 1980s that opposed the military government of President Zia-ul-Haq.) and charter of Democracy (COD) (A coalition between two political parties PML and PPP was signed in 2006) on the other. A country's constitution could be placed under three categories i.e. legal constitutionalism, Political constitutionalism, and constitution based on traditions. (2018, Annual report of Human Rights Commission Accessed on 23.06.2018 11:13 PM) Up till now Baluchistan, KP, GB, and AJ&K have failed to establish independent Higher Education Commissions. Prior to the 18th amendment Education including Higher Education was made part of the concurrent legislative list vide entry No. 38. In the post-18 amendment era two commissions in Punjab and Sindh have been established but opposed by HEC practically. HEC did not bother to take on board the provincial commissions while making the decision of devolution of power as mandated in the 18th Amendment. Further, not inviting the vice-chancellor of Punjab and Sindh Higher Education Commissions to meetings aggravates the situation. While the Provincial Commissions Act specifies the inclusion of the HEC in the governing body; the HEC has not taken part in any activity in the last six years. In 2011 Dr. Atta-ur-Rehman requested before the Supreme Court of Pakistan that HEC should remain intact and the Supreme Court accepted the request (PLD 2011 SC 1).

Commissions at federal and provincial level need to take joint steps to curb the challenges and improve research work while balancing their constitutional and legal limitations. In this paper constitutional and legal roles of HEC have been discussed while elucidating the exhaustive role of Provincial Higher Education Commissions in post post-18th amendment era. Moreover, the types of autonomy should have been elaborated to comprehend what type of autonomy is available to Higher education

commissions including Higher Education Institutions and what type of autonomy ought to be available to these commissions and institutions as mandated in post 18th Constitutional Amendment. Courts are trying to safeguard the autonomy of higher education institutions while not interfering in the internal matters of universities. Though it was the responsibility of the Federal and Provincial governments to comprehend their status Courts had to interfere to fill the gap and facilitate the government to accomplish the task. There is a dire need to devise a legislative framework to shift the power from HEC to provincial commissions without disturbing the academia and students benefitting from HEC. We will also critically analyze the HEC ordinance with respect to the powers of HEC and the acts of other Provincial bodies with respect to their powers and the role of courts in reshaping the existing Legislative Framework.

Research Methodology

This research employed a mixed interdisciplinary approach, utilizing both quantitative and qualitative research techniques. The predominant focus was on qualitative methods, which are part of the conventional legal methodology of analyzing primary and secondary legal sources. Integral parts of this research include case laws, acts, and ordinances of the universities; therefore, the provisions of the world constitutions, laws related to the higher education sector, and important case laws of higher courts while shedding light on the irregularities of the regulatory framework of higher education sector in Pakistan have been discussed. The theoretical framework encompasses the application of regulatory ritualism theory. Additionally, this research includes arguments based on data from several publications regarding various regulatory systems that have been published by national and international authors and agencies.

Framing of Legal Issues

Whether devolution of power regarding the autonomy of the higher education sector as envisaged by the 18th Amendment is reflected and incorporated in the existing Legislative Framework. (Report of the 18th Amendment to the Constitution: Issues and Challenges in Curriculum and Standards, Institute of Social and Policy Sciences, Islamabad (I-SAPS). pp1-4)

Whether higher education commissions have become autonomous as mandated in the amendment.

Whether the judgment or decision of higher courts has impacted and shaped the post-18th amendment legislative framework of higher education Institutions.

Definition of Autonomy

Let's start by understanding the concept of autonomy, particularly in the context of the higher education sector. According to Black's Law Dictionary, autonomy refers to the political independence of a nation and the right to self-govern. In legal terms, it is associated with freedom, self-determination, self-rule, and sovereignty. The Oxford Dictionary defines autonomy as the ability to act and make decisions independently, while Webster's Dictionary describes it as the state of being self-governing. The autonomy of a university has been widely discussed and explored in literature, encompassing various aspects. It generally refers to the institution's freedom to govern itself through its own rules and regulations. Mahatma Gandhi similarly emphasized that institutional autonomy is about the freedom to function effectively and achieve academic excellence through self-administration. A common point of debate is the reduction of state control, with the perception that decreased reliance on government funding enhances institutional autonomy (A thing or person that reduces a shock or protects somebody/something against difficulties.)

There are three approaches to overseeing the autonomy of institutions: delegation from central to lower tiers of government, delegation to a specialized intermediary body, and delegation directly to the academic institution. In the case of an intermediary body, the central authority, particularly the Ministry of Education, delegates control over funding and operations to this body. (Williams & Joanna, [2017](#))

This perspective considers HEC as an intermediary that significantly influences the level of autonomy in universities. (Marino & Stefano, [2003](#)).

The Concept of Substantive Autonomy

To understand the HEC's role as a buffer body, it's

essential to consider two types of institutional autonomy: Substantive and Procedural autonomy. Substantive autonomy allows universities or colleges to set their own goals and programs, while procedural autonomy primarily concerns financial matters (Azam Ali Khawaja, [n.d.](#)).

Curriculum design, a key component of substantive autonomy, falls under the National Curriculum Revision Committee (NCRC), which operates within the HEC's Academic Division. The NCRC is tasked with researching and analyzing existing syllabi and comparing them to curricula from advanced countries for each discipline. Final decisions are made by committees mainly composed of university teachers, and for professional degree programs, the relevant Accreditation Council must be involved. The implementation status of NCRC-provided courses is uncertain, as many universities create and teach their own curricula. For instance, Dow University of Health Sciences recently advertised its integrated Modular Medical Curriculum developed by its faculty. Courses proposed by the NCRC or developed by universities are typically reviewed by the Board of Studies, the Faculty Board, and finally, the Academic Council, chaired by the Vice-Chancellor. University Acts often specify that the institutions themselves determine their course of studies. Discussions indicate that the NCRC curriculum is not fully adopted by many universities, making it challenging to assess the true extent of institutional autonomy without knowing the acceptance level of the NCRC curriculum. Thus, universities may have partial autonomy.

University research policies are usually available, and the HEC periodically directs universities to focus on priority areas, such as energy, water resources, and food security. Nonetheless, research proposals in all fields were considered without specific funding allocations. Most universities lack internal research funding, relying primarily on HEC funds. The HEC supports research through programs like the National Research Program for Universities (NRPU), University-Industry-Technology Support Program, and donor funding. It also finances researcher capacity building, university research promotion, and research commercialization, resulting in universities being dependent on government funding and not fully autonomous. Regarding entrance standards, a few

Accreditation Councils set the requirements that universities must follow, while other programs allow universities to determine their own admission criteria, which can vary. For example, admission in QAU is based on 10% of seats merit-based, and the rest is allocated based on provincial quotas. As a federal university, it admits students from all over Pakistan. Conversely, Karachi University prioritizes candidates with Sindh domicile who completed matriculation in Karachi. Academic staff appointments are managed by the universities themselves. The recruitment process involves newspaper and website advertisements, application reviews by departmental chairs, deans, scrutiny committees, and final interviews by the Selection Board, which includes two subject experts. Appointments for Lecturers and Assistant Professors follow this process, while Professors and Associate Professors are evaluated by three foreign experts approved by the Syndicate and the Vice-Chancellor. Final recommendations require Syndicate and Senate approval. (Gilbert [2012](#))

Lastly, the university acts grant institutions the authority to conduct examinations and confer academic degrees, diplomas, and certificates, establishing them as autonomous bodies in this respect. Ibid.

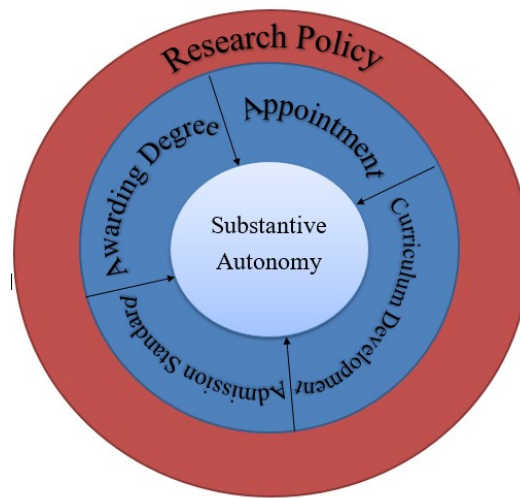
The Concept of Procedural Autonomy

Previously, we examined autonomy in the higher education sector and the concept of substantive autonomy. Now, we will discuss procedural autonomy. According to Clause 10 (h) of the HEC Ordinance, one of the roles of the HEC is to assess the financial needs of public universities, approve funding based on their recurring annual requirements, development projects & research proposals, and ensure that a substantial portion of these funds supports research and libraries. Given the limited resources of universities, they heavily depend on HEC for financial support. Funds are

allocated based on evaluations conducted by the Finance and Planning Committee, a statutory body within the university, with final approval granted by the Syndicate. Financial management is overseen by the Treasurer, whose appointment is approved by the Chancellor. The Treasurer is responsible for budgeting, managing funds, and ensuring they are used as intended. Data on the status of Treasurer Position filled by government account department delegates, or temporarily held on an additional charge basis is insufficient but could provide insights into the financial management performance of the department. University statutes typically require an Audit Officer to conduct pre-audits on all transactions, with annual audits performed by federal and provincial audit departments where applicable. This indicates that universities have some degree of financial autonomy. Non-teaching staff appointments are managed by universities, often starting with requests from teaching departments and administrative sections. These requests are reviewed by a dedicated committee like the Finance and Planning Committees. The issue lies not in the number of sanctioned posts but in the nature of their appointments: whether permanent, contractual, or temporary. Universities also handle their own purchasing and contracting activities. Conventionally, a Purchase Section manages these needs, with assistance from a Purchase Committee comprising senior academics and administrative personnel for teaching departments. The Tender Committee, supported by the Project Directorate, manages repairs, maintenance, and construction works, adhering to government regulations in both scenarios. Colleges, overseen by Provincial Higher Education commissions are often considered the weakest link in the education system. To sum up, Universities possess significant autonomy in many substantive and procedural matters, which can be enhanced by providing opportunities to improve their managerial skills. (Tyler, [2006](#)).

Figure 1

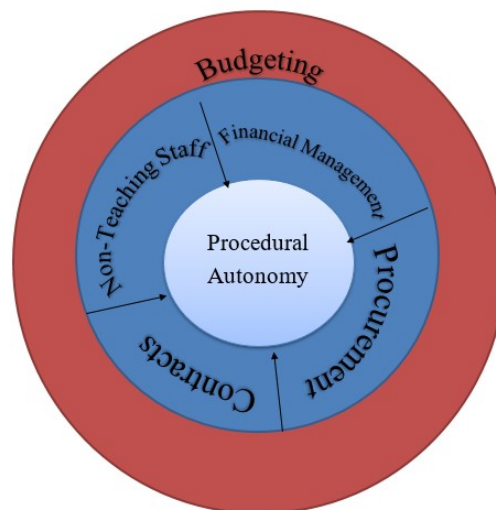
Substantive Autonomy



This figure shows that no substantive autonomy has been granted in the case of Research Policy.

Figure 2

Procedural Autonomy



The figure showed that no procedural autonomy has been granted to universities in Budgeting.

Source: Primarily idea was taken from the report of Dr. Azam Khawaja

The depth analysis of available data and study of case laws showed that universities enjoy more substantive autonomy and less procedural autonomy. Nonetheless, universities did not enjoy autonomy in budgeting and research policy-related

issues. These issues have great importance for the development of universities.

Legislative Framework of the Higher Education Sector in the Pre-Eighteenth Amendment Era

Pakistan has a long-standing history of unsuccessful reforms. Numerous education sector reforms have been introduced by successive governments,

including the significant efforts of the Education Commission of 1959, which implemented large-scale educational changes known as the Sharif Report. (Jahangir, 2008)

Despite offering numerous practical recommendations, the Commission's objectives were not met due to political apathy and insufficient funding. Subsequent Education Policies in 1970, 1972, 1979, 1992, and 1998, along with eight Five-year Plans, similarly failed to achieve their intended goals. (Ibid.)

Successive Pakistani governments, both military and civilian, have historically neglected higher education. (Ibid.)

Recognizing the critical role of higher education in economic and social development, the Government of Pakistan in 2001 established a 'Task Force' to address issues in the higher education sector. This Task Force was tasked with reviewing past policies and plans, identifying reasons for their failures, and proposing effective solutions to reform higher education. (Ministry of Education, Government of Pakistan. The State of Education in Pakistan 2003-2004. March 2005).

In its March 2002 report, the Task Force recommended replacing the ineffective UGC with the HEC. The report outlined numerous structural and functional issues in the higher education sector and proposed comprehensive measures to address them. Following these recommendations, the HEC was established in 2002 by a Presidential Ordinance, aiming to enhance both the quality and quantity of higher education in Pakistan. The HEC operated as an autonomous entity under the Federal Government of Pakistan, with its chairperson holding the status of a Federal Minister. One of the HEC's significant achievements is the substantial increase in funding for public-sector universities. Unlike the UGC, the HEC has the authority to enforce compliance from higher education institutions, with penalties for noncompliance including budget cuts. It is responsible for formulating policies, evaluating institutional performance, and guiding academic, administrative, and financial management. Additionally, the HEC sets guidelines for the recruitment, selection, performance, and compensation management of faculty and staff. Since its establishment, the HEC's performance has been scrutinized by scholars. (Ibid).

Notably, distinguished Pakistani physicist Pervez Hoodbhoy has questioned the HEC's effectiveness, arguing that little has been done to reform higher education. Hoodbhoy contends that teaching quality has not improved, and no robust mechanism has been developed to assess institutional performance. (Hoodbhoy, 2009)

Similarly, Jahangir highlights that the HEC has not adequately addressed university autonomy. Before the HEC, universities operated under provincial governments with considerable financial and administrative authority, often resisting UGC's influence on policy matters. Traditionally, Pakistani universities have enjoyed significant autonomy and now express frustration that the HEC imposes decisions without their consultation, particularly regarding faculty appointments, PhD supervisor assignments, scholarship awards, and university governance (Autonomy of Higher Education Institutions in Pakistan: A Case Study of University of Education, Lahore

P 15-24 IISTE Public Policy and Administrative Research Vol 3, No 12, 2013).

Legislative Framework of Higher Education Sector in Post-Eighteenth Amendment Era: A Critical Analysis of HEC Ordinances

In the last paragraphs, the position of the Higher Education sector has been elucidated in the pre-eighteenth amendment era. Now, it is time to critically examine the legislative framework of the Higher Education sector after the Eighteenth Amendment. Theoretically, the Higher Education Commissions in two provinces have been established vide the Punjab Higher Education Act, 2014, and Sindh Higher Education Act, 2013 nonetheless, no constructive efforts have been made to devolve the power from the Federation to provinces practically. (Published in the Gazette of Pakistan, Extraordinary, Part-I' 26th March 2021).

The HEC in Federal is reluctant to transfer power to the provincial commissions. The basic purpose of the 18th Amendment was to decentralize the governance system, but decentralization is useless without effective financial and administrative autonomy. The chairperson of these commissions is not called in important policy matters related to respective provinces. The hegemony of HEC is going on and backed by the

August Supreme Court of Pakistan. On March 28, 2011, a meeting led by Mian Raza Rabbani decided to decentralize the Higher Education Commission (HEC). Consequently, on March 31, 2011, HEC was notified of this decision through notification No. F.3(26)/2010-IC-I. Due to the resulting uncertainty, the Ministry of Finance froze Rs. 7.7 billion in funds. On April 7, 2011, a delegation of Vice-Chancellors met with then-President Asif Ali Zardari and PM Gillani to advocate for maintaining HEC as a federal body. Subsequently, on April 9, 2011, a petition was filed in the Supreme Court of Pakistan under Article 184(3) of the Constitution of 1973 by Prof. GA Miana, Rector of Riphah University, and Brig. Muhammad Ajaeb, DG of the UOL, against the FG and the Ministry of Law. Arshad Ali Chaudhary filed and Anwar Masood Khan drafted the petition. Concurrently, Dr. Atta-ur-Rehman submitted a plea to the Supreme Court requesting a Suo-Moto action against the devolution of HEC. On April 12, 2011, a three-member bench including C.J. Iftikhar Muhammad Chaudhary, Muhammad Sair Ali J., and Ghulam Rabbani J. ruled that March 31, 2011, notification would not affect HEC's operations as per the Ordinance of 2002, which would take precedence in case of any conflict.

In March 2021, the Higher Education Commission (Amendment) Ordinance, 2021, was enacted, introducing changes to the appointment process of the Executive Director by the Government of Pakistan. The tenure of the Chairperson was set to two years, and members to four years, with no extensions allowed. The amendment to Section 11 limits the commission's authority over the appointment of the executive director, transferring this power to the Prime Minister, acting through the Ministry of Federal Education (MOFE). Section 9 of the amendment specifies that decisions of the MOFE or the Commission will be determined by the majority opinion of its members present and voting. This amendment appears to aim at dismissing the current chairperson and bringing the commission under MOFE's control. The Prime Minister's direct oversight of the Higher Education sector undermines provincial autonomy, as MOFE's involvement means political figures will influence higher education decisions, affecting the distribution of research funds, scholarships, and faculty appointments. This politicization could

hinder HEC's mission to advance higher education, research, and development free from political interference. Furthermore, the ongoing dispute between Dr. Tariq Banuri and Dr. Atta-ur-Rehman has escalated. Banuri advocates for enhancing undergraduate education quality nationwide, while Rehman focuses on increasing the number of scholarships, PhDs, research grants, and publications. The primary goal of higher education has always been to develop critical thinking skills. Unfortunately, HEC has struggled to cultivate such skills among students. Persistent issues include a lack of coordinated efforts at federal and provincial levels, problematic attestation policies, inconsistencies in curricula, challenges in associate degree programs, frameworks for redesigning PhD programs, and the proliferation of universities across the country, which have drawn widespread criticism (Published in the Gazette of Pakistan, Extraordinary, Part-I' 26th March 2021).

The story does not end here rather another bill has been proposed on 3rd July, 2023 in which the Prime Minister would be the controlling authority of the Higher Education Commission. The Prime Minister can dismiss the chairperson at any time. The powers of the HEC chairperson will be reduced by downgrading his status from Federal Minister to the head of an organization. Undoubtedly, it would be a step towards undermining provincial autonomy if the HEC power to regulate the universities in provinces. The main control of HEC will reduce the role of the provincial government to direct regional universities to conduct research to cater the regional needs. The Association of Private Sector Universities of Pakistan (APSUP) wrote an open letter to Prime Minister Muhammad Shahbaz Sharif to withdraw the proposed amendment of 3rd July 2023 as it would be a potential threat to provincial autonomy. The amendment in 2021 and the proposed amendment in 2023 could have far-reaching consequences for the quality and growth of the higher education sector in Pakistan. Now ruling party and members have direct control over HEC. There is a dire need to safeguard the autonomy of the Higher Education sector as mandated in the Eighteenth Amendment. Muhammad Ashraf- Rector of the University of Lahore observed that a sole standard-setting body would undermine provincial autonomy. The provinces could not cater to regional needs. The Prime Minister having authority over HEC means

that members of the ruling party have direct influence over HEC. There is no job security for the chairperson as it would be a great hurdle to making efficient decisions. It appears that no engagement was done with important stakeholders like FAPUASA also condemned the proposed bill. It was a requirement of the Eighteenth Amendment that too many powers bestowed to HEC through HEC Ordinance 2002 should be curtailed and delegated to respective provinces so that they may enjoy administrative and financial autonomy. However, the situation is quite contradictory. Though overnight devolution could not be possible but process of devolution must be continued. Once the burden shifted to provinces they would be capable of lifting the bar. To conclude respect for a constitutional amendment is imperative for the growth and development of HE Institutions in Pakistan.

Role of the Court to Safeguard the Autonomy of the Higher Education Sector in Pakistan

There are several judgments in which courts decided not to interfere in the internal affairs of public sector universities. There are so many other landmark judgments of the Supreme Court of Pakistan in which the Court decided that no interference will be made in the internal affairs of the university. For ready reference, we would like to quote the relevant paragraph from judgment. "The judgment highlights that the process of regularization is a policy matter and falls under the Executive's prerogative. Courts should refrain from interference unless a policy violates fundamental rights. Citation: The court cites the concept of institutional autonomy and refers to the Magna Charta Universitatum 2020 (Para 7)" (2024 SCP 44).

Likewise in other cases Court also endorsed the same idea not to interfere in the affairs of educational institutions by holding that courts are neither equipped with such expertise nor do they possess the relevant experience that would allow for interference in such policy matters. Further, it was decided that under this autonomous realm, educational institutions are entitled to deference when making any decisions related to their mission. At the same time, any transgression by the Courts would amount to the usurpation of the power of another, which would be against the spirit of Art. 7 of the Constitution as it is not the role of the Courts

to interfere in policy decisions. (2024 SCP 44 in the case titled as Vice Chancellor Agriculture University, Peshawar Versus Muhammad Shafiq, etc. (In CP 2270/2019)).

However, in another landmark judgment of Irfan Ullah vs FOP through Higher Education, Islamabad. The court concluded that when service rules established by statutory bodies under statutory authority are violated and there is no adequate remedy, these violations can be enforced through writ jurisdiction. However, if the conditions of service for employees of a university are governed by internally issued rules rather than those framed under the statute, any violations cannot be enforced through writ jurisdiction but instead subject to the Master and Servant doctrine. In all public sector universities created by statutory bodies and regulated by statutory rules, the principle of natural justice must be observed in disciplinary proceedings, unless the appointments are purely contractual (WP No. 2838-P/2021 with IR titled as Irfan Ullah vs FOP Date of Decision 10.11.2022).

In another landmark judgment the "Functional Test" has been elucidated. Functional Test has a direct nexus with statutory and non-statutory rules. Statutory rules are rules which are framed under a statute or with government approval. Candidly speaking, it is not possible for parliament to make laws and rules for each and every department; therefore, power is delegated to other corporations to make rules to run their functions smoothly. Functional Test has been endorsed and further developed in the case of Munda Eleven Cricket Club vs FOP that it does not solely depend upon whether the framing of rules requires approval of the government rather it depends on the nature and efficacy of such rules and regulations. It was decided that when rules and regulations are dealt with instructions for internal control and management, they would be non-statutory rules. The same "Functional Test" was also discussed and endorsed in the Aown Abbas Bhatti vs FOP case.

In another case, the petitioner was awarded a major penalty i.e. dismissal from services. The court observed that the petitioner had an alternative and effective remedy available vide sec. 17 of the Act (WP No. 2838-P/2021 with IR titled as Irfan Ullah vs FOP Date of Decision 10.11.2022) which provides for revision before the Chancellor So it was decided to avail that remedy (PEEDA, 2006) which provides for

revision before the Chancellor so it was decided to avail that remedy. Vires of the Pakistan Medical Mission Act was challenged. Issue of regularization of services in Pakistan Medical Mission. Guidelines were provided in this case: All employees appointed under the Pakistan Medical Commission Ordinance 2020 are governed by non-statutory rule; therefore, no vested right to continue services, and the PMC Ordinance is intra-vires to the Constitution. In another case the lecturer of MUST was dismissed from service on the basis of serious allegations: breach of trust, misuse of authority, violation of examination rules, and harassment of female students. An inquiry committee found the petitioner guilty. The Court decided not to interfere in the administrative matters of the university and dismissed the petition (2024 MLD 130; 2023 PLC Service 75; 2012 PLC (C.S.) 1366; 2019 SCR 226; Azad Jammu and Kashmir Interim Constitution, 1974, Article 44.; 2014 PLC (C.S.) 386; 2011 SCMR 842; PLD 2010 SC 969; 2023 PLC Service 103

PLD 2020 Islamabad 130).

In a landmark judgment, the Supreme Court of Pakistan held that academic freedom encompasses not only the liberty of thought, expression, and association within the university but also the university's right to make decisions about educational and disciplinary matters. A university's role is to foster an environment conducive to speculation, experimentation, and creativity, maintaining 'the four essential freedoms': who may teach, what may be taught, how it shall be taught, and who may be admitted to study. The court emphasized that democracy, human rights, and the rule of law can only be sustained if higher education institutions, their staff, and students enjoy academic freedom and institutional autonomy. Genuine democracy requires that the higher education and research community be able to inquire freely. Higher education institutions should embody a democratic culture, which in turn promotes democratic values in society. Universities must have their academic, administrative, and disciplinary autonomy respected to produce free thinkers and leaders. So, the Court decided the benchmark for all higher educational institutions is that they have sufficient autonomy to make their decisions independently (2022 PLD 92 dated 04.01.2022 in Civil Petition No. 3429 of 2021 by Supreme Court of

Pakistan case titled as Khyber Medical University case.)

The court also clarified that higher courts can have jurisdiction where there is a justifiable dispute or violation of the constitution or law (2022 PLD 92).

In another case, the Lahore High Court held that universities have the right to make their own decisions about academic matters and that the government should not interfere in these decisions (Dr. Shazia Qureshi v. University of Punjab (2016); Writ Petition No. 2993/2016).

Similarly, in the case of Dr. Amir-ullah Marwat vs. University of Peshawar (2016), the Peshawar High Court held that universities have the right to make their own decisions about faculty appointments, and the government has no right to interfere in these decisions. (Dr. Amir Ullah Marwat vs. University of Peshawar (2016); Writ Petition No. 1174-P/2015.)

In terms of private universities, Pakistan's Higher Education Commission (HEC) has created a regulatory framework for the development of private universities in the country and private universities must meet certain requirements and criteria; they are also subject to frequent inspections of HEC to verify conformity (Ibid).

In another case, the court ruled that no intervention should be made in administrative issues of the university (Dr. Asadullah vs FOP; PLD 2002 SC 939).

Generally, Courts do not interfere in the internal matters of public sector universities. Courts generally defer to educational institutions' internal governance (PLD 2021 SC 745; Yasir Nawaz v. Higher Education Commission) with the Exception that the Court intervened when minimum requirements of natural justice or legal principles are violated; another exception is that the Court made intervention when a fundamental right is infringed (Fakheryar Khan v. Agriculture University, Peshawar, PLD 2016 Peshawar 266)

. As a general rule, the writ jurisdiction is available as an alternative remedy (2011 SCMR 1813).

Whether the Role of HEC should be Constricted? How?

Before we proceed further to highlight whether the role of the Federal HEC should be circumscribed, it depends upon the performance and achievements of

the HEC since its establishment. The achievements of HEC include but are not limited to the number of universities increased from fifty-seven in 2004 to over 200 in 2022; enrollment increased from 137,000 to 600,000 students; in 55 years there were 3000 PhDs but in the last 15 years this figure has reached to 4000 PhDs; over 1000 PhD students are availing scholarship in National and International universities; citation increased 1000 times in last years; performance of HEC admired by the world-renowned institutions: World Bank, USAID, British Council, and Royal Society. These were the achievements when presented before the Supreme Court of Pakistan; courts directed that HEC will remain intact and notification of devolution shall have no effect (Government of Pakistan. "Notification No. F.3(26)/2010-IC-I." Issued on March 31, 2011).

But the question arises here what would be the consequences of not following the Eighteenth Constitutional Amendment? Apparently, it seems that no big loss occurring but ultimately Federal HEC has to shift its powers to Provincial HECs. Nonetheless, no effort has been made to table the necessary legislation in any provincial assembly. Though the overnight transfer of power is not possible rather it will take time to transfer power smoothly. There is a pressing need to establish a long-term policy for the Higher Education sector. Achieving this is challenging amidst political instability. Clearly, political stability is essential for making meaningful improvements in Pakistan's Higher Education sector.

The Role of HEC with Respect to International Best Practices: A Comparative Analysis

The functions of the HEC are detailed in the HEC Ordinance of 2002, particularly in section 10. Before the Eighteenth Amendment, the HEC's primary duties included formulating policies and guidelines as per sections 9, 10, and 11 of the Ordinance. Its main role was to develop policies that promoted Pakistan's socio-economic development. The HEC was also responsible for setting guidelines for the minimum criteria and qualifications for appointments, promotions, and salaries, in consultation with the Finance Division. Another significant duty was to foster national and

international research collaborations. Additionally, the HEC provided guidance to institutions on creating curricula that adequately covered basic and applied sciences, social sciences, humanities, and engineering & technology. Section 9 specified that the HEC would appoint an Executive Director for a four-year term, with meetings to be held twice annually. This framework defined the HEC's role before the Eighteenth Amendment was implemented.

In the Post-18th amendment era initially no major changes took place due to the decision of the Supreme Court of Pakistan to continue its working till further orders and that the powers of HEC will not be shifted. However, in upcoming years the commissions in other provinces were also established with minimum financial autonomy. Later on, an amended ordinance in 2021 was promulgated in which amendments were made regarding the appointment of Executive Director by the Government of Pakistan, and the tenure of Chairperson was fixed for two years and members for four years with the condition that no further extension shall be given to them (Published in the Gazette of Pakistan, Extraordinary, Part-I' 26th March 2021 Ordinance LIII of 2002).

The amendment to Section 11 reduces the commission's authority in appointing the executive director, transferring this power to the Prime Minister, who will make the appointment through the Ministry of Federal Education (MOFE). Furthermore, Section 9 of the amendment stipulates that "all decisions of the Ministry of Federal Education (MOFE) or the Commission shall be determined by the majority opinion of its members present and voting." This revised ordinance appears to aim at dismissing the chairperson and bringing the commission under MOFE's control. The Prime Minister's direct oversight of the Higher Education sector undermines provincial autonomy. MOFE's involvement in HEC matters implies that politicians will be making decisions regarding higher education.

Then there comes the court of law to safeguard the autonomy by not interfering in the internal affairs of educational institutions. In a famous case law, the petitioner was awarded a major penalty i.e. dismissal from services. The court noted that the petitioner had an alternate and efficacious remedy available under section 17 of the Act (Ibid) which

provides for revision before the Chancellor so it was decided to avail that remedy. Vires of the Pakistan Medical Mission Act was challenged. Guidelines regarding the issue of regularization of services in Pakistan were provided in this case that all employees appointed under the Pakistan Medical Commission Ordinance 2020 are governed by non-statutory rule; therefore, they do not have a vested right to continue services and the PMC Ordinance is intra-vires to the Constitution. In another case the lecturer of Mir University of Science & Technology was dismissed from service on the basis of serious allegations: breach of trust, misuse of authority, violation of examination rules, and harassment of female students. Consequently, an inquiry committee found the petitioner guilty. The Court decided not to interfere in the administrative matters of the university and dismissed the petition (2024 MLD 130; 2023 PLC Service 75; 2012 PLC (C.S.) 1366; 2019 SCR 226; Azad Jammu and Kashmir Interim Constitution, 1974, Article 44.; 2014 PLC (C.S.) 386; 2011 SCMR 842; PLD 2010 SC 969; 2023 PLC Service 103

PLD 2020 Islamabad 130;)

Education reforms around the world have increasingly granted higher education institutions more autonomy to achieve their goals more effectively. There is a noticeable trend towards transferring control from Ministries of Education (MOE) to independent or intermediary bodies. Paradeise, Reale, Bleiklie, and Ferlie (2009) observe that the UK has a strong tradition of university autonomy compared to other nations. In the UK, universities are not directly controlled by the MOE but are supported by it. Since the early 1980s, the UK has transitioned from strong bureaucracies to a New Public Management (NPM) governance style in higher education. Similar reforms have been seen across Europe: Sweden has devolved power from the central government to individual institutions, Denmark has shortened course durations, and Germany has amended laws to grant more autonomy to its higher education institutions. In Asia, Malaysia has restructured higher education institutions to be less hierarchical, China has delegated powers from the federal to provincial governments, and countries like Pakistan and India have transferred powers to intermediary bodies, a trend now emerging in other regions (Autonomy of Higher Education Institutions in Pakistan: A Case

Study of University of Education, Lahore." *IISTE Public Policy and Administrative Research* 3, no. 12 (2013): 15-24.)

Recommendations

There is a fear that when power and authority are transferred to the provincial commission, they will fail to deliver accordingly; therefore the HEC at the Federal level should not shift its powers and funds to provincial commissions immediately. One should not forget that there are certain committees in the National Assembly and Senate to have checks and balances on the autonomy of Higher Education Institutions. Standing Committees on Federal Education and Professional Training would have a strong check on all issues related to the higher education sector in Pakistan. When commissions are established in all provinces these committees will have a strong check on all actions performed by these commissions. In case of any discrepancy, penal action may be taken against these bodies. So, HEC at the Federal level should not be fearful regarding failure to perform these commissions. Secondly, there is a judicial check which is available all the time in the shape of writs under art. 184(3) & 199 of the Constitution. Candidly speaking courts are not entertaining cases related to the internal affairs of the university. But in case of violation of fundamental rights writ jurisdiction is available all the time. Writ jurisdiction is also available to cope with extraordinary circumstances. Apart from above mentioned checks, there are certain internal Checks in the shape of internal investigation committees as independent accountability mechanisms to address the grievances.

Findings and Conclusions

Federal HEC has failed to devolve the power to the provincial Higher Education Commissions as mandated by the Eighteenth Constitutional Amendment. The basic purpose of the 18th Amendment was to decentralize the governance system, but decentralization is useless without effective financial and administrative autonomy. The question of autonomy arises when power has been shifted to respective provinces. To date, only two provinces have established their commissions but no substantial powers have been shifted to these commissions so the question of autonomy could not arise. Secondly, the courts are safeguarding the

autonomy of Higher Education Institutions while having limited interference in Educational institutions. On the other hand, no major shift has been made in the HEC ordinance as mandated by the 18th constitutional amendment. Universities need to adopt a pragmatic legislative framework and regulatory mechanism to address the grievances of staff and students. Autonomy in the higher education sector will create a healthy environment where all institutions and commissions enter into a healthy competitive environment. This would be fruitful not only for students, teachers, staff, and other members but also for society at national and international levels. Succinctly, the primary objective of the 18th constitutional amendment was to empower provincial Higher Education Commissions but higher courts are supporting Federal HEC to remain intact and have a strong hold over provincial commissions. The courts are also supporting institutional autonomy while not interfering in the internal affairs of universities. No doubt, there are a lot of achievements associated with HEC but still, there is a dire need to circumspect the role of HEC gradually at the Federal level while empowering the provincial HECs with true letter and spirit as it is a requirement of law and Constitution as mandated in 18th amendment. The

upshot of the discussion is that as soon as the FHEC will not accept the existence of PHEC the situation will be dismal. The ultimate goal is to restore the status of PHEC as practiced in developed countries. There is a dire need to circumspect the role of FHEC as mandated in the 18th amendment. Likewise, PHECs should have limitations to make decisions while living in a legislative framework elucidated in respective acts. In case of blockage, article 143 of the constitution should be helpful to sort out the issue. While exercising their powers the provincial higher education commissions should not go beyond their powers and they need to restrict themselves in a regulatory and legislative framework along with their ancillary institutions. With the transfer of power to provincial Higher Education Commissions robust accountability mechanisms should be developed at the commission level. All stakeholders including but not limited to FHEC, PHECs, universities, government, CCI, ECC, IPC should enter into meaningful dialogue to cater to the existing problem i.e. Hegemony of Federal HEC over provincial Commissions and without delegating its power to provincial HEC's neither meaningful change could be brought nor constitutional supremacy could be maintained in society.

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